

Remarks/Arguments

Please reconsider the application in view of the above amendments and the following remarks.

Status of Claims

Claims 37-48 stand rejected. Claims 37-41 and 48 have been amended without prejudice. Claim 42 has been cancelled without prejudice. New claims 49-57 have been added to further define what applicant regards to be the invention. Support for the new claims may be found throughout the original disclosure, for example, in Fig. 4 and on pages 10 and 15.

Rejections under 35 U.S.C. §112

Claims 37-48 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

The Office Action asserts that claim 37 is indefinite and incomplete for omitting essential structural cooperative relationships between the claimed elements and relies on section 2172.01 of the MPEP as the basis for this requirement. Section 2172.01 of the MPEP actually cites cases that have held that interdependency between the elements of the claimed device is not essential and that a claim does not necessarily fail to comply with 35 U.S.C. 112, second paragraph, when the elements are not directly functionally related and do not directly intercooperate. See *Ex parte Nolden*, 149 USPQ 378, 380 (Bd. Pat. App. 1965); *Ex parte Huber*, 148 USPQ 447, 448-49 (Bd. Pat. App. 1965). The test for definiteness under 35 U.S.C. 112, second paragraph, is whether "those skilled in the art would understand what is claimed when the claim is read in light of the specification." *Orthokinetics, Inc. v. Safety Travel Chairs, Inc.*, 806 F.2d 1565, 1576, 1 USPQ2d 1081, 1088 (Fed. Cir. 1986).

Applicants submit that those skilled in the art would understand what is claimed, and particularly the cooperative relationships between the claimed elements, when independent claim 37 is read in light of the specification. All of these elements are part of the aerobic waste treatment system but do not necessarily have a direct cooperative relationship with each other.

All of the elements are in one way or another mounted at or on the container, which thereby acts as a housing and/or static structure either during stationary use or during transport. This cooperative relationship is described throughout the present specification.

Moreover, independent claim 37 recites that the aeration system is “for providing ventilated air to the waste” and the deployment apparatus is “for covering the waste with a removable flexible enclosure.” Thus, the claim recites an indirect relationship between these elements by reciting their function relative to the waste being treated. To provide a similar indirect functional relationship for the electrical equipment and the control unit, claim 37 has been amended to recite “electrical equipment including, a control unit for controlling an aerobic waste treatment process.”

With respect to dependent claim 48, the claim has been amended to delete “in particular tarpaulin” in an effort to clarify the claimed subject matter. New claim 49 has been added to recite the tarpaulin.

Accordingly, applicants submit that the claims particularly point out and distinctly claim what applicant regards to be the invention and requests that the rejection under 35 U.S.C. 112, second paragraph, be withdrawn.

Rejections under 35 U.S.C. §103

Claims 37, 38, 40-42, 44, 45 and 47 are rejected under 35 U.S.C. 103(a) as being unpatentable over German Patent No. DE 19724462 to Schnorr (“Schnorr”) in view of U.S. Patent No. 5,312,754 to Bryan-Brown (“Bryan-Brown”). Claim 39 is rejected under 35 U.S.C. 103(a) as being unpatentable over Schnorr in view of Bryan-Brown and further in view of U.S. Patent No. 4,184,602 to Moliard (“Moliard”). Claims 43 and 46 are rejected under 35 U.S.C. 103(a) as being unpatentable over Schnorr in view of Bryan-Brown and further in view of U.S. Patent No. 6,534,306 to Allen (“Allen”). Claim 48 is rejected under 35 U.S.C. 103(a) as being unpatentable over Schnorr in view of Bryan-Brown and further in view of U.S. Patent Application Pub. No. 2002/0195781 to Jones, Jr. et al. (“Jones”). Applicants traverse these rejections.

Independent claim 37 is directed to an aerobic waste treatment system comprising a push wall against which waste can be heaped, an aeration system for providing ventilated air to the waste, electrical equipment, a control unit, a deployment apparatus for covering the waste with a removable flexible enclosure, and a container. To provide clarification, claim 37 has been amended to recite that the system is stationary in use and that the push wall is arranged outside of the container. Support for this amendment may be found in the present specification, for example, on page 9, lines 1-5, page 10, line 14, and Figs. 1-3.

Applicants submit that the proposed combination fails to result in the claimed invention. Schnorr discloses a system for further composting of already pre-composted material. The waste heap 2 is pushed against a mill 5, which forms one opening of a container. The mill 5 reduces the composting material and stores the reduced material inside the container for further composting. Upon milling, the container is moved against the waste heap on rollers 16 (see arrow 26 in Fig. 1). Every further step, such as aeration takes place inside of the container. In other words, the system of Schnorr is mobile when in use because the waste will be further processed inside the container only. At best, the rear inside wall of the container opposite the mill 5 might be considered a push wall. Thus, Schnorr fails to disclose push wall that is stationary when in use and arranged outside of a container, as recited in amended claim 37.

Bryan-Brown also discloses a composting apparatus and system with a container 10 that contains the waste for composting (see col. 6, lines 49-55). In Bryan-Brown the waste is heaped against the inside walls of the container 10 and there is no push wall outside of the container. Thus, even if Schnorr and Bryan-Brown can be combined in the manner proposed in the Office Action, the combination would not include a stationary push wall outside of the container.

One significant disadvantage of the systems in Schnorr and Bryan-Brown, in which composting takes place inside of the container, is the limited volume available for composting. Other disadvantages include excessive manufacturing costs and difficulty getting waste into the container. These disadvantages are discussed in the present specification, for example, on page 6, lines 4-22.

Thus, the aerobic waste treatment system recited in independent claim 37 would not have been obvious over the proposed combination of Schnorr and Bryan-Brown. Accordingly, applicants request that the rejection under 35 U.S.C. 103(a) be withdrawn.

Dependent claims 38-41 and 44-52 all depend, either directly or indirectly from independent claim 37. The additional teaching references relied on as teaching the limitations recited in these dependent claims also do not appear to disclose an aerobic waste treatment system with a container comprising a stationary push wall at its outside. Thus, these dependent claims are patentable for the same reasons as independent claim 37, as discussed above, as well as for the additional limitations recited therein.

New Claims

Applicants submit that new method claims 53-57 are patentable over the proposed combination of references for at least the same reasons discussed above. For example, the proposed combination of references does not teach or suggest a method in which a push wall is mounted externally to a container, a ventilator is inside of the container, and a deployment apparatus is mounted at the top of the container. Thus, applicants submit that new method claims 53-57 would not have been obvious over the cited references.

Conclusion

The claims have been shown to be allowable over the prior art. Applicant believes that this paper is responsive to each and every ground of rejection cited by the Examiner in the Action dated June 19, 2009, and respectfully requests favorable action in this application. The examiner is invited to telephone the undersigned, applicant's attorney of record, to facilitate advancement of the present application.

Please apply any charges not covered, or any credits, to Deposit Account 50-2121 (Reference Number HHS115).

Respectfully submitted,

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